

SUSANA ALCALA WOOD, City Attorney (SBN 156366)
CHANCE L. TRIMM, Senior Deputy City Attorney (SBN 139982)
CTrimm@cityofsacramento.org
CITY OF SACRAMENTO
915 I Street, Room 4010
Sacramento, CA 95814-2608
Telephone: (916) 808-5346
Facsimile: (916) 808-7455

Attorneys for Defendant
CITY OF SACRAMENTO

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO HOMELESS UNION, a
local of the CALIFORNIA HOMELESS
UNION/STATEWIDE ORGANIZING
COUNCIL, on behalf of itself and those it
represents; BETTY RIOS; DONTA
WILLIAMS; FALISHA SCOTT and all
those similarly situated,

Plaintiffs,

vs.

COUNTY OF SACRAMENTO, a political
subdivision of the State of California; CITY
OF SACRAMENTO, a municipal
corporation; and DOES 1 – 100,

Defendants.

Case No.: 2:22-cv-01095-TLN-KJN

**DEFENDANT CITY OF
SACRAMENTO'S OPPOSITION TO
PLAINTIFFS' MOTION TO EXTEND
OR REINSTATE PRELIMINARY
INJUNCTION AGAINST
DEFENDANT CITY OF
SACRAMENTO AND FOR
SANCTIONS; CITY OF
SACRAMENTO'S REQUEST FOR
HEARING**

I

INTRODUCTION

Pursuant to a prior motion filed by plaintiffs, this Court previously issued a preliminary injunction on July 28, 2022, prohibiting the City from enforcing any provisions of its camping ordinance regarding homeless individuals in all public areas throughout the City for a period

1 of twenty-eight days until August 26, 2022. As the Court will recall, the sole basis of plaintiffs'
2 prior motion for preliminary injunction was that due to anticipated extremely high
3 temperatures in the City during the month of August, the City's enforcement of its camping
4 ordinance in all public areas against homeless individuals could adversely impact the health of
5 homeless individuals illegally camping in public areas throughout the City.

6 This Court's prior preliminary injunction expired on August 26, 2022. Plaintiffs now
7 request the Court grant another preliminary injunction and/or reinstate the prior preliminary
8 injunction preventing the City and City employees from enforcing the City's camping
9 ordinance against homeless individuals for an additional thirty-day period until September 25,
10 2022. Based on this opposition, and the evidence submitted in support of the City's opposition,
11 including the attached declarations of meteorologist Jan Null and numerous other City
12 employees, the City respectfully requests that plaintiffs' request for an additional preliminary
13 injunction for a thirty day time period until September 25, 2022 be denied.

14 Alternatively, assuming this Court grants plaintiffs' motion to extend the prior preliminary
15 injunction until September 25, 2022, the City requests that specific areas and locations
16 designated as "critical infrastructure" within the City be exempted from the court's order
17 pursuant to the express provisions of Chapter 8.140 of the Sacramento City Code which is
18 attached as **Exhibit 1** to the City's opposition, and pursuant to an ordinance passed by the City
19 Council on August 23, 2022 which allowed removal of all tents that blocked sidewalks and
20 business entrances in the City.

21 On February 20, 2020, the Sacramento City Council passed Resolution No. 2020-0009
22 which added Chapter 8.140 to the Sacramento City Code. Chapter 8.140 of the City Code
23 identifies and designates certain locations within the City as "critical infrastructure." Pursuant
24 to the express provisions of Section 8.140.020 of the City Code, "critical infrastructure may
25 include, but is not limited to, government buildings, such as fire stations, police stations, jails,
26 or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage
27 systems, or levees; or systems, such as computer networks, public utilities, electrical wires,
28 natural gas pipes, telecommunication centers, or water sources." Pursuant to Chapter

1 8.140.030 of the City Code, it is unlawful to camp, use camp paraphernalia, or store personal
2 property at any of the following locations: 1. Critical infrastructure; 2. Within 25 feet of critical
3 infrastructure; 3. Within 25 feet of a vehicular or pedestrian entrance or exit of critical
4 infrastructure; 4. On those portions of a right-of-way that are required by local, state, or federal
5 law to be free of obstruction to first responders, including, but not limited to members of law
6 enforcement, fire prevention, or emergency-medical-services agencies; 5. Within a hollow
7 sidewalk; or 6. Wildfire risk area.

8 In addition to requesting an additional 30-day period enjoining the City from enforcing
9 the provisions of the camping ordinance against homeless individuals, plaintiffs also contend
10 the City violated this Court's prior preliminary injunction by clearing homeless camps and
11 conducting sweeps of homeless individuals. Although plaintiffs make this allegation, it is
12 completed unsupported by the evidence submitted by plaintiffs in their moving papers.
13 Contrary to plaintiffs' allegations, as set forth in more detail below, the City fully and
14 completely complied with this Court's prior preliminary injunction in all respects. For these
15 reasons and based on the evidence set forth in support of the City's opposition, the City
16 respectfully requests that plaintiffs' request for sanctions against the City based on the City's
17 alleged violation of this court's prior preliminary injunction also be denied.

18 For all the reasons set forth in more detail below, the Court is respectfully requested to
19 deny plaintiffs' motion to extend and/or reinstate a preliminary injunction precluding the City
20 for enforcing the provisions of the City's camping ordinance for an additional period of 30
21 days until September 25, 2022. In addition, the Court is respectfully requested to deny plaintiffs
22 request for monetary sanctions against Defendant City of Sacramento for alleged violation of
23 this Court's prior preliminary injunction.

24 II

25 **ANTICIPATED WEATHER CONDITIONS IN SACRAMENTO FOR SEPTEMBER** 26 **OF 2022 DO NOT SUPPORT PLAINTIFFS' REQUEST FOR AN EXTENSION OF** 27 **THE PRELIMINARY INJUNCTION**

28 The City retained meteorological expert Jan Null to address the issue of anticipated

1 daily maximum temperatures in the City of Sacramento during the month of August in 2022.
2 Mr. Null is a Certified Consulting Meteorologist with the American Meteorological Society.
3 From 1983 to 1997, Mr. Null served as the Lead Forecaster for the National Weather Service
4 Forecast Office for the San Francisco Bay Area. Since 2014, Mr. Null has been an Adjunct
5 Professor at San Jose State University teaching a course in Meteorology. From 1987 to 2014,
6 Mr. Null taught two courses in Meteorology as an Adjunct Professor at San Francisco State
7 University. Mr. Null has forty-eight years of experience as a professional meteorologist.

8 Mr. Null was retained by the City to offer opinions regarding the daily normal
9 maximum temperatures that can be expected in the City of Sacramento during the month of
10 September in 2022 based on past historical weather patterns in Sacramento. In forming his
11 opinions, Mr. Null reviewed daily temperature data from the National Weather Service site
12 for Downtown Sacramento for the period between 2000 and 2021. Mr. Null also reviewed
13 information regarding the normal maximum temperatures in Downtown Sacramento from
14 1991 to 2020.

15 In his capacity as a certified weather expert, and based on his review of daily normal
16 maximum temperatures in Downtown Sacramento for the time period between 1991 and
17 2021, daily normal maximum temperatures in Sacramento historically decrease to 92.2
18 degrees on September 1st. (See Exhibits 2 and 3 to the declaration of Jan Null) Daily
19 maximum temperatures continue to decrease throughout the month of September with a
20 normal maximum of 89.7 on September 15 and 85.0 on October 1st. (See Exhibits 2 and 3 to
21 the declaration of Jan Null) According to Mr. Null, in September, there are an average of
22 only 17.5 days with a daily maximum temperature of 90 degrees or over. (Null Declaration
23 at paragraph 16) The historical maximum daily temperature analysis for Downtown
24 Sacramento by Mr. Null set forth above clearly and unambiguously refutes plaintiffs
25 unsupported contention that a thirty-day extension of this Court's prior preliminary order is
26 necessary based on anticipated "extreme heat" days in September of 2022.

27 Plaintiffs' contention there will be days of "extreme heat" in Sacramento during the
28 month of September, 2022 which necessitate extension of the preliminary injunction for an

1 additional thirty is unsupported by any expert testimony or admissible evidence. Plaintiffs'
2 motion includes a declaration from Flojaune Cofer. Ms. Cofer identifies herself as a public
3 health expert. It is undisputed Ms. Cofer has no background whatsoever in meteorology. Ms.
4 Cofer's speculation, and plaintiffs' attorney's unsupported opinions regarding anticipated
5 daily high temperatures in the City in September of 2022 are clearly not admissible
6 concerning whether any days of "extreme heat" can be expected in Sacramento in September
7 of 2022.

8 For all the reasons set forth in detail above, the City respectfully requests that plaintiffs'
9 motion to extend the preliminary injunction to September 25, 2022 be denied.

10 III

11 **PLAINTIFFS' REQUEST FOR AN EXTENSION OF THE PRELIMINARY** 12 **INJUNCTION SHOULD ALSO BE DENIED BECAUSE EXTENDING THE** 13 **PRELIMINARY INJUNCTION WOULD BE EXTREMELY DETRIMENTAL TO** 14 **THE HEALTH AND SAFETY OF CITY RESIDENTS**

15 Submitted to the Court along with this opposition are supporting declarations of
16 Sacramento Fire Marshall Jason A. Lee, Sacramento Police Lt. Ryan Bullard, City Park
17 Ranger, Danielle Luther, Department of Utilities, Operations and Maintenance
18 Superintendent, Doug Henry and Sacramento Police Captain Bryce Heinlein. As indicated
19 in the supporting declarations of each of these supervising and managing City employees,
20 extending the preliminary injunction would have an extremely detrimental impact on public
21 health and safety. The detrimental health and safety impacts would include but are not
22 limited to all the following: An increase in human waste and refuse at numerous locations,
23 overall increased health risks to citizens, increased risk of fires at various locations,
24 compromised security at Sacramento Regional Transportation sites where security is
25 provided by Sacramento Police employees, increased risk of flooding at creeks, channels, and
26 other waterways, and an overall increase in criminal activity. All the health and safety risks
27 outlined above and discussed in specific detail in the supporting declarations of City
28 employees Lee, Bullard, Luther, Henry and Heinlein clearly support the City's contention

1 that extending the preliminary injunction would have an extremely negative impact on
2 public health and safety within the City. For this additional reason, the Court is respectfully
3 requested to deny plaintiffs' motion to extend the preliminary injunction.

4 **IV**

5 **ASSUMING THE COURT GRANTS PLAINTIFFS' REQUEST TO EXTEND THE**
6 **PRELIMINARY INJUNCTION, THE CITY REQUESTS AN EXCEPTION FOR**
7 **"CRITICAL INFRASTRUCTURE" AND FOR "WILDFIRE RISK AREAS" AS SET**
8 **FORTH IN CHAPTER 8.140 OF THE SACRAMENTO CITY CODE AND**
9 **PURSUANT TO THE RECENT SIDEWALK ORDINANCE PASSED BY THE CITY**
10 **COUNCIL**

11 Chapter 8.140 of the Sacramento City Code prohibits camping or the use of camping
12 paraphernalia at or near locations identified by the City as "critical infrastructure" or
13 "wildfire risk areas." Areas identified in Chapter 8.140 as "critical infrastructure" include but
14 are not limited to the following: "government buildings, such as fire stations, police stations,
15 jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks,
16 drainage systems, or levees; or systems, such as computer networks, public utilities, electrical
17 wires, natural gas pipes, telecommunication centers, or water sources." Assuming the Court
18 grants plaintiffs' motion to extend the preliminary injunction, the City respectfully requests
19 that the areas within the City generally identified in Chapter 8.140 be exempted from the
20 Court's order.

21 On August 23, 2022, the Sacramento City Council passed an ordinance which allowed
22 removal of all tents that blocked sidewalks and business entrances in the City. The City also
23 requests that enforcement of this new ordinance not be suspended, assuming the Court is
24 inclined to grant plaintiffs' motion to extend the preliminary injunction to September 25,
25 2022.

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V

**PLAINTIFFS' MOTION SETS FORTH NO ADMISSABLE FACTS THAT SUPPORT
THEIR CLAIM THE CITY OR ANY CITY EMPLOYEE VIOLATED THE COURT'S
PRIOR PRELIMINARY INJUNCTION**

At pages 4 and 5 of plaintiffs' motion, plaintiffs contend the City violated this court's prior preliminary injunction. This claim is completely unsupported and without merit. At page 4, lines 6-17, plaintiffs admit that the City called off a previously scheduled clean-up at Morrison Creek. Plaintiffs specifically reference an e-mail message from defense counsel to plaintiffs' attorney that stated in relevant portion as follows: "...pleased be advised that pursuant to Judge Nunley's prior order, City personnel will not seek to enforce the City's ordinances or the Code of Federal Regulations and remove homeless individuals or their personal property from Morrison Creek during the remaining time Judge Nunley's order remains in effect." (Plaintiffs' Motion at page 4:13-18)

At page 4 of their motion, plaintiffs also make an unsupported allegation that City Park Rangers planned a "sweep" at an unidentified location on August 3, 2022. However, plaintiffs also admit this alleged sweep never took place. (Plaintiff's motion at page 4:21-24)

At pages 4 and 5 of their motion, plaintiffs allege two homeless individuals (Jessica Gilbert and Joseph Jensen) were contacted by Sacramento Police Sergeant Joshua Kirtlan and Officer Kelli Streich on August 7, 2022. Sergeant Kirtlan and Officer Streich both activated their body cameras during their interaction with Ms. Gilbert and Mr. Jensen on August 7, 2022. (Videotapes from the body worn cameras of Sergeant Kirtlan and Officer Streich regarding their contact with Ms. Gilbert and Mr. Jensen are provided for the Court's review along with the City's opposition)

As indicated by the body camera video recordings by both officers, they arrived at the location of Ms. Gilbert and Mr. Jensen in response to a 311 complaint about a sidewalk being completely blocked by a tent. Upon arriving at this location, both officers confirmed the sidewalk was completely blocked by a tent on the public sidewalk erected by Ms. Gilbert and Mr. Jensen. Both officers also confirmed a car registered to Ms. Gilbert was illegally

1 parked in a no parking zone next to the large tent blocking the sidewalk.

2 Sergeant Kirtlan told Ms. Gilbert and Mr. Jensen it was illegal to block the sidewalk and
3 that they could not legally park Ms. Gilbert's car, in "no parking" zone. Sergeant Kirtlan
4 then asked Ms. Gilbert and Mr. Jensen to remove their tent, because it was blocking the
5 public sidewalk. Sergeant Kirtlan explained the tent on the sidewalk was a public safety issue
6 because citizens would be forced to go around the tent and onto the road, potentially getting
7 struck by a vehicle. Sergeant Kirtlan further explained that although he could tow Ms.
8 Gilbert's car, he was not going to tow it or even issue a parking ticket.

9 Thereafter, Sergeant Kirtlan finally asked both Ms. Gilbert and Mr. Jensen to go
10 somewhere else where they were not completely blocking the sidewalk and where they could
11 legally park their vehicle. Thereafter, Ms. Gilbert and Mr. Jensen packed up their tent and
12 departed this location in their vehicle.

13 Ms. Gilbert and Mr. Jensen allege they were contacted by unidentified Sacramento
14 Police officers when they returned in their vehicle to the same location on August 13, 2022.
15 The Sacramento Police Department has no record of any contact between any SPD
16 personnel and Ms. Gilbert and Mr. Jensen on August 13, 2022.

17 After being informed of this Court's prior preliminary injunction, all employees of the
18 Sacramento Police Department fully complied with the Court's prior preliminary injunction.
19 (Declaration of Captain Bryce Heinlein at Paragraphs 4 and 8)

20 Based on the aforementioned, there is clearly no evidence that supports plaintiffs'
21 contention the City violated this Court's prior preliminary injunction. For this reason, the
22 Court is respectfully requested to deny plaintiffs request to impose sanctions against the City
23 for alleged violation of the Court's prior preliminary injunction.

24 VI

25 **THE CITY RESPECTFULLY REQUESTS THE COURT SCHEDULE A HEARING** 26 **REGARDING PLAINTIFFS' MOTION FOR A NEW PRELIMINARY INJUNCTION** 27 **AND REQUEST FOR SANCTIONS**

28 Based on plaintiffs' contention the City violated the Court's prior preliminary

1 injunction and seeks monetary sanctions from the City for this alleged violation, the City
2 requests the opportunity to be heard and present evidence during a hearing in response to
3 plaintiffs' contentions. The City contends an evidentiary hearing is appropriate for reasons of
4 due process given plaintiffs' request for the award of monetary sanctions based on the City's
5 alleged violation of this Court's prior preliminary injunction.

6 **VII**

7 **CONCLUSION**

8 For all the reasons set forth above, the City respectfully requests that plaintiffs' motion to
9 extend the prior preliminary injunction against Defendant City of Sacramento be denied. The
10 City also respectfully requests that plaintiffs' motion for sanctions against Defendant City of
11 Sacramento be denied.

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13 DATED: August 29, 2022

SUSANA ALCALA WOOD,
City Attorney

14
15 /s/ CHANCE L. TRIMM

16 By: _____

CHANCE L. TRIMM
Senior Deputy City Attorney

17
18 Attorneys for Defendant
CITY OF SACRAMENTO